

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES RUTTLEN,

Petitioner,

v.

ORDER
04-CV-173S

JAMES CONWAY,

Respondent.

1. On March 17, 2004, Petitioner commenced this action seeking federal habeas relief under 28 U.S.C. § 2254.

2. On May 11, 2006, this Court referred the matter to the Honorable Hugh B. Scott, United States Magistrate Judge, for all proceedings necessary for a determination of the factual and legal issues presented, and to prepare and submit a Report and Recommendation containing findings of fact, conclusions of law, and a recommended disposition of the case pursuant to 28 U.S.C. § 636(b)(1)(B).

3. In a Report and Recommendation filed on February 16, 2007, Judge Scott recommended that Petitioner's Petition for a Writ of Habeas Corpus be denied.

4. On March 6, 2007, Petitioner filed Objections to Judge Scott's Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3). Respondent was provided the opportunity to respond to Petitioner's Objections, but did not do so.

5. This Court has thoroughly reviewed this case *de novo* and has considered Judge Scott's Report and Recommendation, Petitioner's Objections thereto, and the applicable law. Upon due consideration, this Court will accept Judge Scott's

recommendation and deny and dismiss Petitioner's Petition for Writ of Habeas Corpus for the reasons stated in the Report and Recommendation. Petitioner's Objections are therefore denied.

IT HEREBY IS ORDERED, that this Court accepts Judge Scott's February 16, 2007, Report and Recommendation (Docket No. 20) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Petitioner's petition seeking federal habeas relief (Docket No. 1) is DENIED for the reasons set forth in the Report and Recommendation.

FURTHER, that because the issues raised in the petition are not the type that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, this Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly, a Certificate of Appealability is DENIED and shall not issue.

FURTHER, that this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith.

FURTHER, that the Clerk of the Court is directed to take the necessary steps to close this case.

SO ORDERED.

Dated: March 26, 2007
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge